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09/652,713	08/31/2000	Trung T. Doan	93-0421.04	4284

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EXAMINER

MACARTHUR, SYLVIA

ART UNIT PAPER NUMBER

1763

DATE MAILED: 06/03/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 6

Application Number: 09/652,713
Filing Date: August 31, 2000
Appellant(s): DOAN, TRUNG T.

Charles B. Brantley II
For Appellant

EXAMINER'S ANSWER

MAILED

JUN 03 2004

GROUP 1700

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This is in response to the appeal brief filed April 23, 2004

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. On February 19, 2002, Appellant submitted a Notice of Appeal as part of the prosecution of serial no. 09/133,989, which was filed August 14, 1998. Application '989 is the parent application to the current application under appeal. The Appellant's latest act was to file a reply brief on November 7, 2003.

On February 28, 2002, appellant submitted an Appeal Brief as part of the prosecution of application serial no. 09/652,969, which was filed August 31, 2000. Application '969 is a divisional of '989 and therefore a sibling of the current application under appeal. The Board reversed the Examiner in a decision dated July 29, 2003. The Examiner mailed a Notice of Allowance on January 7, 2004. Applicant paid the issue fee on January 15, 2004.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

Claim 1-43 were presented during prosecution of the application under appeal.

Claims 1-35 and 38-43 have been cancelled.

Claims 36 and 37 are pending.

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Claims 36 and 37 are rejected under 35 USC § 112, ¶ 2.

Claims 36 and 37 are appealed.

(4) *Status of Amendments*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. Appellant has filed no amendments subsequent to final rejection.

(5) *Summary of Invention*

The summary of invention contained in the brief is generally correct. The present invention addresses an edge bead. The device comprises a dispenser and a splash controller around the dispenser. The splash controller is physically unattached from the edge bead and is configured to draw the chemical toward the splash controller. The splash controller is configured to generate a gas pressure around the edge bead that is lower than an ambient gas pressure and further configured to physically intercept the chemical.

(6) *Issues*

The appellant's statement of the issues in the brief is correct. The issue is whether the claims 36 and 37 are indefinite according to 35 U.S.C. § 112, ¶ 2.

(7) *Grouping of Claims*

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Appellant's brief includes a statement that claims 36 and 37 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 36 and 37 are rejected under 35 U.S.C. § 112, ¶ 2.

(10) *Response to Argument*

A. Appellant argues that the Examiner has the authority to reconsider the Board's decision on indefiniteness. The Examiner has reconsidered the Board's decision and maintains the position that the claims are indeed indefinite as held by 35 U.S.C. § 112, ¶ 2.

B. Appellant argues that the Examiner has the authority to determine if the claims meet the definiteness requirement of § 112, ¶ 2. The Examiner has evaluated the claims and has found that they fail to meet definiteness requirement of § 112, ¶ 2 even in light of the arguments in this appeal according to pages 2-4.

C. Prosecution economy favors the Board's determination that the claims meet the definiteness requirement of § 112, ¶ 2. "Prosecution economy" can not override the statute requirement for indefiniteness.

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D. Appellant argues that the Board was in error over the definition of "configured" and its use when the argument was made that the suction is applied through the splash controller, rather than the configuration of the splash controller, is what draws the chemical and generates the gas pressure. The Examiner holds the position that the definition of the splash controller remains indefinite and nothing within the definition of "configured" or "configuration" has successfully defined it.

E. Appellant argues that the showing of facts, namely that the challenge of the Board's relied upon definition and that the Boards' dictionary, other dictionaries, and other patents are deemed to be known by one of ordinary skill in the art, and the current Specification all demonstrate the definiteness of the term "splash controller". The examiner disagrees and maintains that the term "splash controller" remains indefinite as held by the Board.

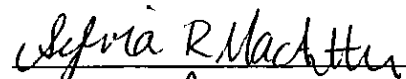
D. Conclusion

In summary, the Examiner has reconsidered the Board's decision upon review of the "showing of facts" by the Appellant and found that claims 36 and 37 are indefinite according to 35 U.S.C. § 112, ¶ 2. For this reason, it is believed that the rejections should be sustained.

Respectfully submitted,

Sylvia MacArthur

Assistant Examiner



Gregory Mills

Supervisory Examiner



Marion Knode

Appeal Conferee



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June 1, 2004

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